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BOARD OF TRUSTEES OF THE CALIFORNIA STATE UNIVERSITY (erroneously also sued as SAN DIEGO STATE UNIVERSITY), JEFF SCHEMMEL

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

DEENA DEARDURFF SCHMIDT, Plaintiff, v. BOARD OF TRUSTEES OF THE CALIFORNIA STATE UNIVERSITY, SAN DIEGO STATE UNIVERSITY, JEFF SCHEMMEL, DOES 1-15, Defendants.	CASE NO.: 07-CV-2343-DMS-WMc **ANSWER OF BOARD OF TRUSTEES OF THE CALIFORNIA STATE UNIVERSITY and JEFF SCHEMMEL TO COMPLAINT**

Defendants Board of Trustees of the California State University (answering for itself and as the proper legal entity operating San Diego State University, erroneously sued herein as a separate entity) and Jeff Schemmel ("Defendants") answer the complaint filed by Plaintiff Deena Deardurff Schmidt ("Plaintiff") as follows:

Nature of Action

1. Defendants lack sufficient information and belief to admit or deny the allegations

in paragraph 1 and therefore deny each and every allegation.

Parties

2. Defendants admit the allegations in paragraph 2 of the Complaint, except as follows: Defendants deny, on information and belief, the allegation that "Between 1994 and August 2007, Schmidt was employed as the head coach of San Diego State University's women's swimming and diving teams" as phrased. Defendants believe that at times plaintiff's correct employment status was slightly different, and that at times another person, a male, was employed with the title of coach of the women's diving team.

3. Defendants admit the allegations in paragraph 3.

4. Defendants deny the allegations in paragraph 4 except as follows: Defendants allege that although San Diego State University (hereinafter, "SDSU") is a campus of the California State University (hereinafter, sometimes "CSU") system, but it is not a proper party defendant, and is not a separate legal entity apart from the Board of Trustees of the California State University.

5. Defendants admit that Jeff Schemmel is the current Director of Intercollegiate Athletics at SDSU and has served in that role since summer 2005. Defendants further admit that Schemmel resides in San Diego County. Defendants lack sufficient information to admit or deny the remaining allegations in paragraph 5 and on that ground deny each and every remaining allegation therein.

6. Defendants lack sufficient information to admit or deny the allegations in paragraph 6 and on that ground deny each and every allegation therein.

7. Defendants lack sufficient information to enable them to fully admit or deny the allegations in paragraph 7 and on that basis deny each and every allegation therein at this time.

Venue

8. Defendants deny the allegations in paragraph 8.

Factual Allegations

9. Defendants admit the allegations in paragraph 9.

10. Defendants admit that between 1994 and 2007, plaintiff variously served in the

capacities of swimming, diving and water polo coach at SDSU as an employee of CSU. Defendants currently lack sufficient information to admit or deny the remaining allegations in paragraph 10 and on that basis deny each and every remaining allegation therein at this time.

11. Defendants admit that between 1994 and 2007, plaintiff variously served as a CSU employee in the capacities of swimming, diving and water polo coach for SDSU. Defendants deny the remaining allegations of paragraph 11.

12. Defendants admit the allegations of paragraph 12.

13. Defendants admit that SDSU operated a swimming pool for the first few years of Schmidt's employment. Defendants further admit that the pool was not NCAA compliant for water polo so the water polo team trained and competed off campus. Other than as admitted herein, defendants lack sufficient information to admit or deny the remaining allegations in paragraph 13 and on that basis deny each and every remaining allegation therein.

14. Defendants admit that the Terry Pool was closed in 1996 for a brief period of time to perform upgrades on the pool. Defendants currently lack sufficient information to admit or deny the remaining allegations contained in paragraph 14, and on that basis deny each and every remaining allegation therein.

15. Defendants lack sufficient information to admit or deny the allegations contained in paragraph 15 and on that basis deny each and every allegation therein.

16. Defendants admit that the Board of Trustees did not construct a new campus pool in or about 1997. Defendants lack sufficient information to admit or deny the remaining allegations contained in paragraph 16 and on that basis deny each and every remaining allegation therein.

17. Defendants admit that Associated Students publicized two student referendums to fund the new swimming pool and that one failed in 1998. Defendants lack sufficient information to admit or deny the remaining allegations contained in paragraph 17 and on that basis deny each and every allegation therein at this time.

18. Defendants admit that the Terry Pool was demolished in or about the year 2000. Defendants lack sufficient information to admit or deny the remaining allegations contained in

paragraph 18 and on that basis deny each and every remaining allegation therein.

19. Defendants admit that the womens' swimming team trained off campus after the Terry Pool closed in facilities such as the City Heights and Joan Kroc facilities. Defendants lack sufficient information to admit or deny the remaining allegations contained in paragraph 18 and on that basis deny each and every remaining allegation therein.

20. Defendants lack sufficient information to admit or deny the allegations contained in paragraph 20 and on that basis deny each and every allegation therein.

21. Defendants lack sufficient information to admit or deny the allegations contained in paragraph 21 and on that basis deny each and every allegation therein.

22. Defendants admit that Rick Bay's contract was not renewed in or about 2001, that Gene Bartow was hired as interim Athletic Director, and that Mike Bohn was hired as Athletic Director at SDSU in or about 2003. Defendants lack sufficient information to admit or deny the remaining allegations contained in paragraph 22 and on that basis deny each and every allegation therein.

23. Defendants admit that Associated Students sponsored a referendum to raise student fees to build a pool facility on campus, which passed in 2004. Defendants lack sufficient information to admit or deny the remaining allegations contained in paragraph 23 and on that basis deny each and every remaining allegation therein.

24. Defendants became aware at some point that plaintiff was ill, but lack sufficient information to admit or deny the remaining allegations contained in paragraph 24 and on that basis deny each and every allegation therein.

25. Defendants admit that Schemmel was hired by CSU as Athletic Director for SDSU in the summer of 2005. Defendants also admit that in or about the time he was hired or began work, Schemmel became aware that Schmidt had cancer. Defendants lack sufficient information to admit or deny the remaining allegations contained in paragraph 25 and on that basis deny each and every remaining allegation therein.

26. Defendants lack sufficient information to admit or deny the allegations contained in paragraph 26 and each of its subparts and on that basis deny each and every allegation therein.

27. Defendants admit that Schmidt's contract for the 2006-2007 academic year expired on May 31, 2007. Defendants also admit that Schmidt was notified that her contract would not be renewed on or about June 11, 2007. Defendants further admit that Schemmel gave Schmidt an additional two month contract until July 31, 2007. Defendants lack sufficient information to admit or deny the remaining allegations contained in paragraph 27 and on that basis deny each and every remaining allegation therein.

28. Defendants admit that a new campus pool opened on the campus of SDSU in March 2007. Defendants lack sufficient information to admit or deny the remaining allegations contained in paragraph 28 and on that basis deny each and every allegation therein.

29. Defendants currently lack sufficient information to either admit or deny the allegations contained in paragraph 29 and therefore deny each and every allegation therein.

30. Defendants lack sufficient information to admit or deny the allegations contained in paragraph 30 and on that basis deny each and every allegation therein.

31. Defendants deny the allegations of paragraph 31 except as follows: Defendants admit that SDSU hired a male to coach the women's swimming team in or about August 2007. Defendants further admit that the three coaches who currently coach the swim and diving team are men.

32. Defendants admit that Plaintiff opted to take an early retirement from CSU and enjoy the benefits of that status. Defendants lack sufficient information to admit or deny the remaining allegations contained in paragraph 32 and on that basis deny each and every remaining allegation therein.

33. Defendants lack sufficient information to admit or deny the allegations contained in paragraph 33 and on that basis deny each and every allegation therein.

34. Defendants lack sufficient information to admit or deny the allegations contained in paragraph 34 and on that basis deny each and every allegation therein.

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First Cause of Action

(Against Board of Trustees and SDSU for

Sex Discrimination – Retaliation under Title IX)

35. In response to paragraph 35, which merely refers to paragraphs 1 through 34, Defendants incorporate their responses to paragraphs 1 through 34 herein by reference.

36. No answer is required to paragraph 36 in that it sets forth solely a legal conclusion.

37. Defendants deny the allegations in paragraph 37.

38. Defendants deny the allegations in paragraph 38.

Second Cause of Action

(Against Board of Trustees and SDSU for

Sex Discrimination under Title IX)

39. In response to paragraph 39, which merely refers to paragraphs 1 through 34 and 36, Defendants incorporate their responses to paragraphs 1 through 34 and 36 herein by reference.

40. Defendants deny the allegations in paragraph 40.

41. Defendants deny the allegations in paragraph 41.

Third Cause of Action

(Against Board of Trustees, SDSU and Schemmel for

Sex Discrimination – Retaliation under FEHA)

42. In response to paragraph 42, which merely refers to paragraphs 1 through 34, Defendants incorporate their responses to paragraphs 1 through 34 herein by reference.

43. Defendants deny the allegations in paragraph 43.

44. Defendants deny the allegations in paragraph 44.

Fourth Cause of Action

(Against Board of Trustees, SDSU for

Sex Discrimination under FEHA)

45. In response to paragraph 45, which merely refers to paragraphs 1 through 34, Defendants incorporate their responses to paragraphs 1 through 34 herein by reference.

46. Defendants deny the allegations in paragraph 46.

47. Defendants deny the allegations in paragraph 47.

Fifth Cause of Action

(Against Board of Trustees, SDSU for Medical Condition and Disability Discrimination under FEHA)

48. In response to paragraph 48, which merely refers to paragraphs 1 through 34, Defendants incorporate their responses to paragraphs 1 through 34 herein by reference.

49. Defendants deny the allegations in paragraph 49.

50. Defendants deny the allegations in paragraph 50.

AFFIRMATIVE DEFENSES

Defendants also asserts the following separate, additional and alternative affirmative defenses:

FIRST AFFIRMATIVE DEFENSE

(To All Causes of Action)

The complaint, and each cause of action, fails to state a claim upon which relief may be granted.

SECOND AFFIRMATIVE DEFENSE

(To All Causes of Action)

Plaintiff's causes of action are barred, in whole or in part, by the applicable statute of limitations, including but not limited to, California Code of Civil Procedure section(s) 337, 338, 339 and/or 340, and the limitations periods set forth under FEHA, California Government Code sections 12941 et seq., for filing charges and suit.

THIRD AFFIRMATIVE DEFENSE

(To All Causes of Action)

Defendants reserve their rights upon factual discovery to assert that plaintiff has failed, refused, or neglected to mitigate or avoid the damages complained of in her complaint, or has elected remedies precluding damages claims. By reason of the foregoing, plaintiff is barred, in whole or in part, from recovering monetary damages from this answering defendant.

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FOURTH AFFIRMATIVE DEFENSE

(To All Causes of Action)

By reason of plaintiff's conduct, she is barred under the doctrine of unclean hands from all forms of relief sought in her complaint.

FIFTH AFFIRMATIVE DEFENSE

(To All Causes of Action)

Plaintiff's claims are barred because the actions of this answering defendant were reasonable in that the employer exercised reasonable care to prevent and correct any behavior, and the plaintiff unreasonably failed to take advantage of preventive or corrective opportunities.

SIXTH AFFIRMATIVE DEFENSE

(To All Causes of Action)

Each and every cause of action in the complaint is barred by the doctrine of waiver.

SEVENTH AFFIRMATIVE DEFENSE

(To All Causes of Action)

Each and every cause of action in the complaint is barred by the doctrine of estoppel.

EIGHTH AFFIRMATIVE DEFENSE

(To All Causes of Action)

Each and every cause of action in the complaint is barred by the doctrine of laches.

NINTH AFFIRMATIVE DEFENSE

(To All State Causes of Action)

Plaintiff's state claims are barred by various immunities of the Government Code, including, but not limited to, Government Code sections 815, 815.2, 815.3, 818.2, 818.8, 820.2, 820.8 and/or 822.2.

TENTH AFFIRMATIVE DEFENSE

(To All Causes of Action)

Plaintiff's claims are barred and plaintiff is barred from seeking any damages from the purported physical or emotional injuries allegedly suffered as a result of her employment and discharge in that the sole and exclusive remedy in this respect is governed by the California

Workers' Compensation Act. Cal. Lab. Code §§3600 et. seq.

ELEVENTH AFFIRMATIVE DEFENSE

(To All Causes of Action)

All damages allegedly incurred by plaintiff were proximately caused by, and are attributable to, the acts of plaintiff, and plaintiff's conduct bars any and all claims for relief or, at a minimum, any recovery by plaintiff must be diminished by the percentage and extent of the plaintiff's own fault in the matters encompassed in her complaint.

TWELFTH AFFIRMATIVE DEFENSE

(To All Causes of Action)

Plaintiff's causes of action, and each of them, are barred in whole or in part on the grounds of consent.

THIRTEENTH AFFIRMATIVE DEFENSE

(To All State Causes of Action)

Defendants have not yet been able to ascertain whether plaintiff appropriately exhausted all statutory claims procedures or other administrative or judicial remedies, and therefore reserve the right to assert these defenses once further discovery takes place.

FOURTEENTH AFFIRMATIVE DEFENSE

(To All Causes of Action)

For purposes of any theory of proof in which defendants would independently have the burden of proof, these answering defendants allege that the actions taken by defendants were done in good faith, and for legitimate business reasons.

FIFTEENTH AFFIRMATIVE DEFENSE

(Reserved)

This answering defendant presently has insufficient knowledge or insufficient information upon which to form a belief as to whether it may have additional, yet unasserted, affirmative defenses. This answering defendant therefore reserves the right to assert additional affirmative defenses in the event discovery indicates it would be appropriate.

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WHEREFORE, this answering defendant prays that:

1. Plaintiff be denied relief by way of her complaint;

2. Plaintiff's complaint be dismissed;

3. Defendants be dismissed with costs of suit and attorneys' fees; and

4. For such and other relief as the court deems proper.

Dated: December 19, 2007

PAUL, PLEVIN, SULLIVAN & CONNAUGHTON LLP

By: s/Richard A. Paul

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BOARD OF TRUSTEES OF THE CALIFORNIA STATE UNIVERSITY, SAN DIEGO STATE UNIVERSITY, JEFF SCHEMMEL

IN THE UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF CALIFORNIA

DEENA DEARDURFF SCHMIDT, Plaintiff, v. BOARD OF TRUSTEES OF THE CALIFORNIA STATE UNIVERSITY, SAN DIEGO STATE UNIVERSITY, JEFF SCHEMMEL, DOES 10-15, Defendants.	CASE NO.: 07-CV-2343-DMS-WMc **CERTIFICATE OF SERVICE** Complaint filed: November 7, 2007 Notice of Removal filed: December 14, 2007 Trial Date: None set

I, Page Stout, hereby declare that I am over the age of eighteen years and not a party to this action. I am employed, or am a resident of, the County of San Diego, California, and my business address is: Paul, Plevin, Sullivan & Connaughton LLP, 401 B Street, Tenth Floor, San Diego, California 92101.

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On December 19, 2007, I caused to be served the following document(s):

- **ANSWER OF BOARD OF TRUSTEES OF THE CALIFORNIA STATE UNIVERSITY AND JEFF SCHEMMEL TO COMPLAINT**

on the interested party (ies) in this action by placing ☑ a true copy ☐ the original thereof and addressed as follows:

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By **ELECTRONIC SERVICE VIA CM/ECF SYSTEM**) In accordance with the electronic filing procedures of this Court, service has been effected on the parties above, whose counsel of record is a registered participant of CM/ECF, via electronic service through the CM/ECF system

I declare that I am employed by the office of a member of the bar of this court at whose direction the service was made.

Executed December 19, 2007, at San Diego, California.

Page Stout
PAGE STOUT